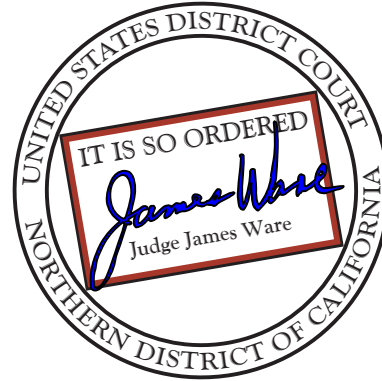


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FEDERATED MUTUAL INSURANCE COMPANY



UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN JOSE DIVISION

CIVITAF CORPORATION, a California  
Corporation,

Plaintiff,

v.

FEDERATED MUTUAL INSURANCE  
COMPANY, a Minnesota Corporation,  
FRONTIER INSURANCE COMPANY, a  
New York Corporation, and DOES 1  
through 20, inclusive,

Defendants.

Action No.: C-05-00595 JW (HRL)

JOINT EX PARTE APPLICATION FOR  
EXTENSION OF EXPERT-DISCLOSURE  
AND EXPERT-MOTION DEADLINES;  
DECLARATION OF THOMAS NIENOW;  
ORDER.

Date: No Hearing  
Time: No Hearing  
Courtroom.:8  
HONORABLE JAMES WARE

**JOINT EX PARTE APPLICATION**

Plaintiff Civitaf Corporation and defendant Federated Mutual Insurance Company, jointly request that the Court enter an order under Fed.R.Civ.P. 6(a), extending by 14 days the deadlines for expert-witness disclosures, rebuttal expert-witness disclosures, and to file motions to exclude all or part of an expert witness's testimony. The bases for the

1 request are as follows:

2 1. Fed.R.Civ.P. 6(a) states that when, by order of court, “an act is required or  
3 allowed to be done at or within a specified time, the court for cause shown may at any  
4 time in its discretion ... with or without motion or notice order the period enlarged if  
5 request therefor is made before the expiration of the period originally prescribed ....”  
6 Under the Court’s August 9, 2005, scheduling order, the current deadlines relating to  
7 expert-witnesses are as follows:

8	November 15, 2005	Expert-witness disclosures.
9	November 29, 2005	Rebuttal expert-witness disclosures.
10	January 17, 2006	Last day to hear motions to exclude all or part of an
11		expert’s testimony.

12 Because none of these deadlines has passed, the Court is authorized to grant the  
13 extensions of the deadlines in the scheduling order upon ex parte application. N.D. Cal.  
14 L.R. 7-10.

15 2. In this insurance-coverage action, Civitaf seeks defense and indemnification  
16 from Federated in connection with Civitaf’s alleged liability in an underlying  
17 construction-defect lawsuit styled *Amica Mut. Ins. Co. v. Civitaf Corp. et al.*, filed in  
18 Santa Clara County Superior Court (No. 1-04-CV-017010). Civitaf and Federated are  
19 both parties to the *Amica* action.

20 3. A global mediation is scheduled in the *Amica* action for November 17,  
21 2005. If the mediation resolves the *Amica* action, Civitaf and Federated believe it will  
22 likely also resolve the issues between Civitaf and Federated in this action. In that case,  
23 disclosure of expert-witness information and filing of motions to challenge expert-witness  
24 testimony will not be necessary. In order to prevent the expenditure of resources on pre-  
25 trial activities that may be unnecessary following the global mediation in the *Amica*  
26 action, Civitaf and Federated respectfully request that the current deadlines for expert-  
27 witness disclosures and rebuttal expert-witness disclosures be extended by 14-days each.  
28 Civitaf and Federated also respectfully request that the Court extend by 14-days the

1 deadline to hear motions to exclude expert-witness testimony, in order to preserve the  
2 Court's timing of such motions relative to the disclosures.

3 4. The following deadlines in the Court's August 9, 2005, order will remain  
4 unchanged:

5 December 15, 2005	Last day to complete mediation.
6 January 17, 2006	Last day to hear motions to exclude all or part of an
7	expert's testimony.
8 January 20, 2006	Last day to conduct discovery of expert witnesses.
9 February 27, 2006	Last day to hear dispositive motions.
10 March 30, 2006	Last day to lodge Preliminary Pretrial and Trial Setting
11	Conference Statement and Proposed Order.
12 April 10, 2006	Preliminary Pretrial and Trial Setting Conference.
13	

14 Respectfully submitted,

15 NIELSEN, HALEY & ABBOTT LLP

16  
17 November 7, 2005

By: 

18 Thomas H. Nienow  
19 Attorneys for Defendant  
20 FEDERATED MUTUAL INSURANCE COMPANY

21 Respectfully submitted,

22 SWEENEY, MASON, WILSON & BOSOMWORTH

23  
24 November 8, 2005

By: 

25 Christopher J. Olson  
26 Attorneys for Plaintiff  
27 CIVITAF CORPORATION  
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March 30, 2006

Last day to lodge Preliminary Pretrial and Trial Setting  
Conference Statement and Proposed Order.

April 10, 2006

Preliminary Pretrial and Trial Setting Conference.

Dated: November 10, 2005

  
James Ware, U.S. District Judge